



MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen
Chair

Kenita V. Barrow
Vice Chair

April 22, 2016

Waiver 16-04-005

Pursuant to 19A-13(b) of the Public Ethics Law, for one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement with any person or business if the public employee significantly participated during the previous three years in regulating the person or business, or in any procurement or other contractual activity concerning a contract with the person or business, unless the Ethics Commission grants a waiver of the restriction.

Robert Keith Compton was employed by the Montgomery County Department of Transportation (MCDOT) from August 1986 to October 2015; a span of 29-years. Over the last 9 years of that service, he served in the capacity as Chief, Division of Highway Services, DOT, until his retirement on October 1, 2015.

The duties of the Chief, Division of Highway Services (DHS), DOT, are high-level programmatic and budgetary planning for the purpose of maintenance and guardianship of the County's transportation system including all elements of the public right-of-way. In order to carry out its mission, the DHS utilized a portfolio of roughly 100-contracts for materials and services ranging from asphalt and concrete purchases to the procurement of small tools, uniforms, road salt, unskilled labor, skilled labor, and professional services, to name a few. The portfolio of contracts were managed and administered in a centralized Contracts Section within the Division of Highway Services and led by a Manager III who was charged with direct oversight and administration of all contracts and related procurements.

In March 2015, the Manager III who was charged with direct oversight of all contracts administered by the DHS, briefed Mr. Compton about contract and related procurement matters being handled by DHS. At that meeting, the manager suggested that the work associated with the expiring contract held by O'Connell & Lawrence, Inc. should be subject to an RFP (request for proposals) process (pursuant to a recommendation from the Office of the County Attorney) instead of using an IFB (invitation for bids). As a result of this change in approach, the manager indicated to Mr. Compton that he believed that the contract with O'Connell & Lawrence would likely need to be extended beyond its normal expiration date. According to the manager, Mr. Compton did not object, and the manager felt empowered to proceed along the course of action that he had suggested. In the County Attorney's opinion, by being silent, Mr. Compton gave

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tacit approval to the plan of action proposed by the manager, and this constituted significant participation in the contract matter with O'Connell & Lawrence and triggered the prohibitions of 19A-13(b) for Mr. Compton relative to that contractor.¹

Mr. Compton requests that the Commission waive the prohibition of 19A-13(b) so that he may work with O'Connell & Lawrence. Mr. Compton states that his work with O'Connell & Lawrence will not create a conflict of interest, citing to his proposed work as including work on projects in Prince Georges County, MD, Howard County, MD, and for the Maryland State Highway Administration, Maryland Port Administration, and the Maryland Transportation Authority and elsewhere outside of Maryland.

Mr. Roshdieh, the Department of Transportation Director, concurs with Mr. Compton's waiver request, because he does not believe that the proposed employment with O'Connell & Lawrence is "likely to create an actual conflict of interest."

Pursuant to 19A-8(b)(3) of the Public Ethics Law, the Ethics Commission may grant a waiver of the prohibition of 19A-13(b) if the Ethics Commission concludes that the proposed employment is not likely to create an actual conflict of interest. The Ethics Commission has in a number of instances found that there would be no actual conflict of interest where the proposed outside employment activity excluded conducting business with the employee's former County agency for at least the one year period covered by the prohibition in 19A-13(b), but sometimes considerably longer. See, for example, the waivers issued at 15-07-009, 12-06-009, 09-01-001, and 08-11-015. Here the Commission is issuing the waiver recognizing Mr. Compton's indefinite commitment to perform work for O'Connell & Lawrence that does not involve the Montgomery County Department of Transportation.

Upon a review of the request and the Department's concurrence in and support for the waiver request, the Commission finds that there is no actual conflict of interest. Pursuant to the standard of 19A-8(b)(3), the Commission grants the waiver of the prohibition of 19A-13(b). In reaching this decision, the Commission has relied upon the facts and commitments as presented by Mr. Compton.

For the Commission:



Steven Rosen, Chair

¹ The Ethics Commission was originally approached for advice concerning Mr. Compton's employment by O'Connell & Lawrence after Mr. Compton had started working for the firm. While assurances had been given by O'Connell & Lawrence and Mr. Compton that Mr. Compton had not significantly participated in matters affecting O'Connell & Lawrence, under the circumstances, the Commission concluded that management was in a better position to access and consider relevant factual information and determine whether there are any ethics concerns that need to be addressed under the contract or otherwise. In this context, the County Attorney determined that Mr. Compton had significantly participated in the O'Connell & Lawrence contract matter as he was briefed on planned contract actions (and by not commenting, giving tacit approval to the actions.) As a consequence of the County Attorney's determination, Mr. Compton terminated his employment with O'Connell & Lawrence and sought this waiver.